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WRITER'S DIRECT DIAL

July 16, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

ATTN: Shannon Lipp
Wireline Competition Bureau

Re: CC Docket No. 96-45
US Unwired Inc. and Louisiana Unwired Inc.
Petition for Designation as an ETC in the State of Alabama

Dear Madam Secretary:

We write in response to your request for additional information regarding the petition of US Unwired Inc. and Louisiana Unwired Inc. (collectively "US Unwired") for designation as an eligible telecommunications carrier ("ETC") in the State of Alabama pursuant to 47 U.S.C. § 214(e)(6). Specifically, you requested information to confirm that the State of Alabama does not have jurisdiction over competitive eligible telecommunications carriers in Alabama.

As a CMRS carrier, US Unwired is entitled to seek designation as an ETC.¹ Section 254(e) of Act, 47 U.S.C. § 254(e), provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support." 47 U.S.C. § 214(e). Pursuant to 47 U.S.C. § 214(e)(6), the Commission may, upon request, designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State Commission."

¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *First Report and Order*, 12 FCC Rcd 8776, 8858-59 (1997) ("*First Report and Order*").

Marlene H. Dortch, Secretary
July 16, 2003
Page 2

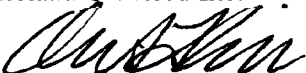
In the *Section 214(e)(6) Public Notice*, the Commission established that a carrier must demonstrate it “is not subject to the jurisdiction of a state commission.”² In its *Twelfth Report and Order* in this docket, the Commission stated that where a carrier provides the Commission with an “affirmative statement” from the state commission or a court of competent jurisdiction that the state lacks jurisdiction to perform the designation, the Commission would consider requests filed pursuant to 214(e)(6).³

On March 12, 2002, the Alabama Public Service Commission (“PSC”) issued an Order which determined that the Alabama PSC does not have jurisdiction over CMRS carriers. The Order, a copy of which is attached hereto, stated, “the APSC has no authority to regulate in any respect cellular services, broadband personal communications services and commercial mobile radio services in Alabama.” The PSC has clearly indicated it does not intend to designate CMRS carriers as ETCs. Accordingly, US Unwired requests ETC designation as “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.” 47 U.S.C. §214(e)(6).

We appreciate the opportunity to present this supplemental information. Should you have any questions or require any additional information, please contact undersigned counsel directly.

Respectfully submitted,

US Unwired Inc.
Louisiana Unwired Inc.

By: 

David LaFuria
B. Lynn F. Ratnavale
Its Counsel

Enclosure

cc: Eric Einhorn, Esq.
Shannon Lipp, Esq.

² *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice*, 12 FCC Rcd 22947, 22948 (1997).

³ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12264 (2000).



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 521
MONTGOMERY, ALABAMA 36101-0521

JIM SULLIVAN, PRESIDENT
JAN COOK, ASSOCIATE COMMISSIONER
GEORGE C. WALLACE, JR., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.
SECRETARY

**PINE BELT CELLULAR, INC. and PINE
BELT PCS, INC.,**

Joint Petitioners

**PETITION: For ETC status and/or
clarification regarding the jurisdiction
of the Commission to grant ETC status
to wireless carriers.**

DOCKET U-4400

ORDER

BY THE COMMISSION:

In a joint pleading submitted on September 11, 2001, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively referred to as "Pine Belt") each notified the Commission of their desire to be designated as universal service eligible telecommunications carriers ("ETCs") for purposes of providing wireless ETC service in certain of the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South, Inc. ("Verizon"). The Pine Belt companies noted their affiliation with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama, but clarified that they exclusively provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services in their respective service areas in Alabama in accordance with licenses granted by the Federal Communications Commission ("FCC"). The pivotal issue raised in the joint pleading of Pine Belt companies is whether the Commission will assert jurisdiction in this matter given the wireless status of the Pine Belt companies.

As noted in the filing of the Pine Belt companies, state Commissions have primary responsibility for the designation of eligible telecommunications carriers in their respective jurisdictions for universal service purposes pursuant to 47 USC §214(e). The Commission indeed established guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997.

DOCKET U-4400 - #2

For carriers not subject to state jurisdiction, however, §214(e)(6) of the Telecommunications Act of 1996 provides that the FCC shall, upon request, designate such carriers as ETCs in non-rural service territories if said carriers meet the requirements of §214(e)(1). In an FCC Public Notice released December 28, 1997 (FCC 97-412) entitled "Procedures for FCC designation of Eligible Telecommunications Carriers pursuant to §214(e)(6) of the Telecommunications Act", the FCC required each applicant seeking ETC designation from the FCC to provide, among other things, "a certification and brief statement of supporting facts demonstrating that the Petitioner is not subject to the jurisdiction of a state Commission."

The Pine Belt companies enclosed with their joint pleading completed ETC application forms as developed by the Commission. In the event the Commission determines that it does not have jurisdiction to act on the Pine Belt request for ETC status, however, the Pine Belt companies seek an affirmative written statement from the Commission indicating that the Commission lacks jurisdiction to grant them ETC status as wireless carriers.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services is one that was rather recently addressed by the Commission. The Commission indeed issued a Declaratory Ruling on March 2, 2000, in Docket 28414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June of 1999, the APSC has no authority to regulate, in any respect, cellular services, broadband personal communications services and commercial mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC §214(e)(6).

DOCKET U-4400 - #3

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission's Jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services. Providers of such services seeking Eligible Telecommunications Carrier status should accordingly pursue their requests through the Federal Communications Commission.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this *12th* day of March, 2002.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan
Jim Sullivan, President

Jan Cook
Jan Cook, Commissioner

George C. Wallace, Jr.
George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr.
Walter L. Thomas, Jr., Secretary